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SINCE our last issue, the *Virginia Supreme Court Reporter* and the *Southern Law Review,* the latter published at Atlanta, Georgia, have ceased publication. The former recently completed its third volume, and the latter succumbed on the completion of its first volume.

The discontinuance of these two valued contemporaries leaves but a small number of law journals in the Southern States—the *North Carolina Law Journal,* the *West Virginia Bar,* and the REGISTER completing the list.

We are especially sorry to part with our neighbor, the *Virginia Supreme Court Reporter.* It supplied us with the local decisions with fullness and despatch, and deserved a more generous support than it seems to have received from the local bar.

THE Circuit Court of the City of Richmond on May 27, 1902, rendered a judgment in the case of *Goldin* v. *Buch,* which is complementary to the rule in *Morse* v. *Kaufman* (*ante,* page 41). Plaintiff asserted a claim against defendant arising out of the sale of a bill of goods, alleged to have been obtained by defendant by falsely representing his brother to be his partner, thus adding materially to the credit of the defendant. Mere *claims,* however, arising out of fraud, says our Court of Appeals in construing the Bankruptcy Act, are barred by a discharge. The action in *Goldin* v. *Buch,* therefore, was brought in tort; it was "an action for fraud" (4 Minor, 3d ed., p. 437), and the proof of the pretense and its falsity being satisfactory to the jury, they rendered a verdict for $240 damages, with interest from the date of the sale. The defendant pleaded specially his pending bankruptcy proceedings, and prayed for a stay of one year, but a demurrer to this plea was sustained because a discharge, if granted, would not affect "judgments in actions for fraud." A plea of not guilty was then tendered, upon which issue was joined with the result stated.

THE Supreme Court of Appeals of this State has announced the abolition of the bar examination heretofore regularly held at Staunton in September. So that hereafter there will be but two examinations held in each year—one at Richmond on the first Friday of the January term, and the other at Wytheville on the fourth Tuesday in June.

There were doubtless good reasons for this action, but it is unfortunate that the announcement was not made earlier, so that those young gentlemen who had arranged to take the September examination, might have had opportunity to file their papers in time for the June examination at Wytheville. The result is, that a number of applicants must now await the examination in Richmond in 1903—and in the meanwhile are unable to enter upon the practice.

We do not, of course, mean to read the court a lecture on the subject. These examinations place heavy burdens on the judges—burdens which they have borne without compensation and with commendable patience and most excellent results. But the court will pardon the suggestion that this change of the rules has a retrospective effect which will make it operate harshly on those applicants who had made arrangements to stand the examination at Staunton, and to whom the notice comes too late to enable them to take the June examination.

WE are indebted to the courtesy of a member of the Accomac county bar for a memorandum of a decision by Judge Blackstone, of the Accomac Circuit Court, important to those interested, professionally or otherwise, in questions of "local option" elections in this State.

In one of the magisterial districts of the county, where local option prevailed, an election was held, under the statute, the result of which, according to the returns made by the judges of election and certified by the electoral board to the county court, showed a majority in favor of licensing the sale of intoxicating liquors. Subsequently, on the application of a citizen to the county court for a license to sell liquor in that district, other citizens had themselves entered as parties contestant, and opposed the issue of the license, on the ground that the election had been carried fraudulently—and offered to prove that the judges of election had stuffed the ballot box. This evidence the county court heard, and upon it decided that the election was void by reason of the fraud. The application for license was, in consequence, refused.

On appeal by the applicant, the circuit court held that there was no provision in the statute for contesting elections of this character; and that howsoever fraudulent such elections may be, in fact, the return of the judges of election and the certificate of the electoral board are conclusive upon the courts.

If this decision be correct—as to which, not having examined the question, we express no opinion—this is a *casus omissus,* which should be speedily provided for by legislation.

WE note with regret the adoption by the Constitutional Convention of Virginia of an ordinance permitting the legislature to limit the powers of the courts in the matter of punishment for contempt. We cannot think that the suggestion, made, as it was, during the last days of the session, was maturely considered. There is nothing in the history of the courts of this State to call for such a provision, and its adoption would seem to have been largely upon theoretical apprehensions of a remotely possible danger.

The evil of the measure, in our judgment, is that it opens the door to a destruction by one branch of government of the power of another to enforce official acts coming within its legitimate scope, and hence, to this extent at least, impairs the boasted equality of the three branches. It is not enough to say that we can trust the legislature not to adopt an extreme measure. The history of our own State demonstrates that at times general assemblies have been elected which could not be trusted—except to do everything which was radical and extreme. It is against this very danger that constitutional bulwarks are provided. Conservative legislators will not wish to encroach upon or limit the powers of a co-ordinate branch—those of another complexion should be restrained from doing so.

In *Carter's Case,* 96 Va. 791, President Keith demonstrates the wisdom of leaving these questions to the determination of our courts, which have never yet abused their power in this respect. We cannot more aptly supplement his reasoning than by calling attention to the converse of the proposition, stated by the Supreme Court of Oklahoma in *Smith* v. *Speed,* 66 Pac. 511, 7 Va. Law Register, 799. In that case, an act allowing the contemnor to have, upon demand, a change of judge or venue and a trial by jury, was held unconstitutional—*Carter's Case, supra,* being quoted from at length. The court says that if the legislature can

make this provision, "there is no reason why an act should not also be passed, and held to he just as effective, which would undertake to submit the contempt proceedings to the jurisdiction of a justice of the peace, either in the county where the violation occurred or in some other county. No reputable lawyer would consent to occupy the bench in such a condition of things."

In matters of this nature, some one must be trusted. Is it safer to place this confidence in courts which have never yet crossed the line of arbitrary power, or in a general assembly which, inspired by popular clamor for the invasion of vested rights, may pass an act, the effect of which may be to devitalize the judgments of the courts, leaving to the judges, it is true, the privilege of writing essays upon what they think the law of the particular case is, but without the power to say, without the consent of a jury influenced more or less by the same clamor, that the parties to the cause shall obey the law?

We trust that the members of the Convention who voted for this measure will never have occasion to regret their action.

In *Odlin* v. *Bingham Copper & Gold Mining Co.* (N. J.) 51 Atl. 925, a bill was filed by a stockholder against a corporation praying that it be enjoined from merging itself with another corporation. The defendant answered, admitting that it had advised its stockholders to accept, in exchange for its stock, the stock of the new company, but denying any purpose on its part in transferring its assets, or of denuding itself of its property or franchises. It was held that no fraud or illegal attempt on the part of the officers of either company had been disclosed, and that a preliminary injunction had been properly refused.

This point was discussed in *Watkins* v. *N. A. Land and Timber Company* (La.) 31 So. 683, *ante,* p. 66, where the general rule was recognized that courts will not aid a stockholder in an attempt to control the managing agents of a corporation representing a majority of stockholders, in the absence of allegations of fraud, *ultra vires* acts, breach of trust, etc. The qualification was added, however, that in a proper case the right of the courts to interfere is indubitable. We note the New Jersey case as an illustration of the general rule. In the Louisiana case, the court considered intervention proper. Of all cases addressed to the sound discretion of a court of equity, these present perhaps the gravest questions. If the confidence of the court in the assurances of defendant's officers is

misplaced, and the merger or other alleged unlawful act is consummated, the wrong in many cases will have been done before the aid of the court can be effectively invoked. If, out of abundant caution, the court award the writ against the doing of what defendant does not contemplate, no especial harm will have been done, and, as the matter of costs is in its discretion, these can be awarded against complainant. Upon the whole, where a modicum of substantial doubt exists as to the ingenuousness of defendant's officers, the court should incline to the issuance of the process.

The opinion in the case of *Mumford* v. *Development Co.,* 111 Fed. 639, is a valuable one in this connection. The leading authorities are cited, and the ruling made, that on a bill filed by minority stockholders alleging that the majority have, by electing directors who act solely in their interests, caused contracts to be entered into by the corporation, transferring all of its property to a second corporation of which they are owners, for a wholly inadequate consideration, equity will rigidly scrutinize the transaction, and unless *bona fides* and an adequate consideration are both apparent, will grant relief. Says the court:

"It matters not in what form these rights are invaded; it is the business of equity to penetrate through subterfuges and discover the actual transactions stripped of all disguises. If, then, it shall appear, no matter what may be the machinery employed, that the majority have sold the corporate property to themselves for a wholly inadequate consideration, a court of equity will grant relief to the minority who have thus been despoiled of their property."